

**PLACER COUNTY SUPERIOR COURT
CIVIL LAW AND MOTION TENTATIVE RULINGS
FRIDAY, JULY 24, 2020, AT 8:30 A.M.**

These are the tentative rulings for civil law and motion matters set at **8:30 a.m., Friday, July 24, 2020**. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., Thursday, July 23, 2020**. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE CHARLES D. WACHOB** and if oral argument is requested, it will be heard in **Department 42**, located at **10820 Justice Center Drive, Roseville, California**.

PLEASE NOTE: TELEPHONIC APPEARANCE IS REQUIRED FOR ALL CIVIL LAW AND MOTION MATTERS. (Emergency Local Rule 10.28; see also Local Rule 20.8.) More information is available at the court's website: www.placer.courts.ca.gov.

1. M-CV-0019965 Gilman, Kevan H. vs. Sweeney, Mike, et al

This tentative ruling is issued by Commissioner Michael A. Jacques. If oral argument is requested it shall be heard **Thursday, July 30, at 8:15 a.m. in Department 41**. In light of the court's other assignments, oral argument will be limited to no more than 15 minutes.

Motion for Relief

Judgment creditors' unopposed motion for relief under Code of Civil Procedure section 473(b) is granted. The memoranda of costs filed May 19, 2020, shall be deemed filed as of the date they were first submitted to the Clerk's Office, May 6, 2020.

Motion to Tax Costs (Sanctions Award/Cost Memo Filed 2-24-2020)

Judgment debtor's motion to tax costs with respect to sanctions awards against attorney Mark Ellis, and the memorandum of costs filed February 24, 2020, is granted.

Judgment creditors' memorandum of costs seeks to add attorneys' fees of \$3,476 as enforcement costs to sanctions awards assessed against counsel for judgment debtor pursuant to Code of Civil Procedure section 685.040. Section 685.040 states:

The judgment creditor is entitled to the reasonable and necessary costs of enforcing a judgment. Attorney's fees incurred in enforcing a judgment are not included in costs collectible under this title unless otherwise provided by law. **Attorney's fees incurred in enforcing a judgment are included as costs collectible under this title if the underlying judgment includes an award of attorney's fees to the judgment creditor pursuant to subparagraph (A) of paragraph (10) of subdivision (a) of Section 1033.5.**

(Emphasis added.)

Code of Civil Procedure section 1033.5 sets forth items allowable as costs under Code of Civil Procedure section 1032. Code of Civil Procedure section 1032 defines the “prevailing party” in any action or proceeding. On its own motion, the court takes judicial notice of the sanctions awards imposed against Mr. Ellis on August 29, 2019, November 19, 2019, and February 13, 2020. In the context of the discovery sanctions assessed against Mr. Ellis, the court did not make a determination regarding the prevailing party, and did not award attorneys’ fees as costs pursuant to Code of Civil Procedure section 1033.5(a)(10). Accordingly, the attorneys’ fees set forth in the memorandum of costs filed February 24, 2020, are taxed in full.

Motion to Tax Costs (Sanctions Award/Cost Memo Filed 5-19-2020)

Judgment debtor’s motion to tax costs with respect to sanctions awards against attorney Mark Ellis, and the memorandum of costs filed May 19, 2020, is granted.

Judgment creditors’ memorandum of costs seeks to add additional attorneys’ fees of \$8,081.70 as enforcement costs to sanctions awards assessed against counsel for judgment debtor pursuant to Code of Civil Procedure section 685.040. Section 685.040 states:

The judgment creditor is entitled to the reasonable and necessary costs of enforcing a judgment. Attorney's fees incurred in enforcing a judgment are not included in costs collectible under this title unless otherwise provided by law. **Attorney's fees incurred in enforcing a judgment are included as costs collectible under this title if the underlying judgment includes an award of attorney's fees to the judgment creditor pursuant to subparagraph (A) of paragraph (10) of subdivision (a) of Section 1033.5.**

(Emphasis added.)

Code of Civil Procedure section 1033.5 sets forth items allowable as costs under Code of Civil Procedure section 1032. Code of Civil Procedure section 1032 defines the “prevailing party” in any action or proceeding. On its own motion, the court takes

judicial notice of the sanctions awards imposed against Mr. Ellis on August 29, 2019, November 19, 2019, and February 13, 2020. In the context of the discovery sanctions assessed against Mr. Ellis, the court did not make a determination regarding the prevailing party, and did not award attorneys' fees as costs pursuant to Code of Civil Procedure section 1033.5(a)(10). Accordingly, the attorneys' fees set forth in the memorandum of costs filed May 19, 2020, are taxed in full.

Motion to Tax Costs (Judgment/Cost Memos Filed 5-19-2020)

Judgment debtor's motion to tax costs with respect to the underlying judgment against judgment debtor, and memoranda of costs filed May 19, 2020, is **continued to August 14, 2020, to be heard by Commissioner Michael A. Jacques.**

The court requests additional information from judgment creditors as follows:

- A copy of the underlying judgment in this action, so as to confirm that fees are awardable pursuant to Code of Civil Procedure section 685.040;
- A brief description of the trial court's 5-12-2009 order, and the result of judgment creditors' appeal thereto;
- A brief description of the trial court's 6-2-2010 order, and the result of judgment creditors' appeal thereto;
- A brief description of the trial court's 12-4-2009 order, and the result of judgment creditors' appeal thereto;
- A brief description of the trial court's 7-12-2010, and the result of judgment creditors' appeal thereto;
- A brief description of the judgment creditors' response to Gilman's dismissal of his appeal, and the outcome of that response

Judgment creditors may file and serve a supplemental brief which addresses the court's request for additional information on or before August 3, 2020. Judgment debtor may file a response to the supplemental brief on or before August 10, 2020, but any such response shall be limited to matters which arise solely from the supplemental brief.

2. M-CV-0072615Z Toor Village, LLC vs. Fatemeh Hajihosseini, D.D.S.

Due to the unavailability of the judicial officer who oversaw trial in this action, the motion for attorneys' fees is continued to August 7, 2020, to a department to be assigned. The court apologizes for any inconvenience to the parties.

3. M-CV-0075975 Bank of America, N.A. vs. Phan, Andrea Y.

This tentative ruling is issued by the Honorable Charles D. Wachob. If oral argument is requested it shall be heard at 8:30 a.m. in Department 42.

Motion for Judgment on the Pleadings

Plaintiff's request for judicial notice is granted.

Plaintiff's motion for judgment on the pleadings is granted.

The court may grant a motion for judgment on the pleadings in favor of plaintiff where the complaint states facts sufficient to constitute a cause of action, and the answer does not state facts sufficient to constitute a defense to the complaint. (Code of Civil Procedure section 438(c)(1)(A).) The grounds for the motion must appear on the face of the challenged pleading, or be based on facts which the court may judicially notice. (Code of Civil Procedure section 438(d).) The court may take judicial notice of a defendant's uncontroverted admissions in responses to request for admissions or interrogatories. (*Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 485; *see also Evans v. Cal. Trailer Court, Inc.* (1994) 28 Cal.App.4th 540, 549.)

The court takes judicial notice of defendant's verified discovery responses, in which she admits all of the material allegations of plaintiff's complaint, and agrees that she has no defense to plaintiff's action. Judgment on the pleadings is appropriate in these circumstances. (Code of Civil Procedure section 438(c)(1)(A).) Judgment shall be entered in favor of plaintiff and against defendant in the principal amount of \$4,483.57, plus costs of \$354.50.

4. S-CV-0024781 Pacific Valley Mechanical, Inc. vs. Stonegate Const., et al

The motion to correct clerical error is continued to August 7, 2020, at 8:30 a.m. in Department 3, to be heard by the Honorable Michael W. Jones.

5. S-CV-0041099 Sierra Northwest Properties, LLC vs. Kila Tahoe, LLC, et al

The motion for attorneys' fees and motion to tax costs are continued to July 31, 2020, to be heard by Commissioner Glenn M. Holley. The date, time and department for oral argument on the motions shall be set forth in the tentative ruling published in connection with the continued hearing date. The court apologizes for any inconvenience to the parties.

6. S-CV-0041191 Mead, Trevor vs. Bishop's Entertainment Enterprises, LLC

Defendant Mobile Rock, Inc.'s motion for summary judgment, or in the alternative, summary adjudication, is dropped in light of the notice of settlement filed May 15, 2020.

7. S-CV-0041389 Davis, Whitey, et al vs. Harmatz, Joshua Weiss, et al

The motion for good faith settlement is dropped as no moving papers were filed with the court.

8. S-CV-0041499 Speedboat JV Partners, LLC vs. Capital One, N.A.

Defendant Capital One, N.A.'s motion for order sequencing discovery is continued to August 7, 2020, at 8:30 a.m. in Department 3, to be heard by the Honorable Michael W. Jones.

9. S-CV-0041951 Newman, Timothy, et al vs. Kerria Holdings, LLC

The motion to compel is continued to August 7, 2020, at 8:30 a.m. in Department 3, to be heard by the Honorable Michael W. Jones.

10. S-CV-0042147 Tibbett, David F., et al vs. Ford Motor Co., et al

The demurrer to second amended complaint is continued to August 14, 2020, at 8:30 a.m. in Department 3, to be heard by the Honorable Michael W. Jones.

11. S-CV-0042249 Abramov, Andrey B. vs. Rakin, Andrey

This tentative ruling is issued by the Honorable Charles D. Wachob. If oral argument is requested, it shall be heard at 8:30 a.m. in Department 42.

Motion to Compel Further Special Interrogatories

Plaintiff's request for judicial notice is granted.

Plaintiff's motion to compel further responses to special interrogatories is denied in light of defendant's representation that supplemental responses have been served. Plaintiff's request for sanctions is denied.

Motion to Strike First Amended Complaint

Defendants move to strike the first amended complaint filed May 20, 2020, on the grounds that it was filed after the deadline imposed by the court.

A motion to strike may be used to strike "all or any part of any pleading not drawn in conformity with the laws of this state, a court rule, or an order of the court." (Code of Civil Procedure section 436.) The court has discretion to strike a pleading which has not been timely filed. (*Buck v. Morrossis* (1952) 114 Cal.App.2d 461, 464-465.) In this case, the court granted plaintiff's motion for leave to amend complaint on March 13, 2020, and directed plaintiff to file and serve the first amended complaint on or before

March 27, 2020. Plaintiff's first amended complaint was not filed and served until May 20, 2020.

As generally described by plaintiff, the ongoing COVID-19 pandemic has led to declarations of a state of emergency at the national and statewide level, Executive Orders by the Governor of the State of California including shelter-in-place orders, orders and directives from the Chief Justice of the State of California, and general and standing orders relating to emergency relief by the Presiding Judge of the Placer County Superior Court. On March 17, 2020, the Presiding Judge of the Placer County Superior Court issued a general order under the authority of Government Code section 68115 and a March 17, 2020 order of the Chief Justice, which deemed March 17, 2020, to April 15, 2020 to be court holidays for the purpose of computing time for filing papers under Code of Civil Procedure sections 12 and 12a. This order was later extended to May 8, 2020. On March 23, 2020, the court announced a reduction of services to critical minimum functions, and stated that the Clerk's Office would only accept filings at the public counter relating to case types which continued to be heard.

On April 6, 2020, the court announced the launch of eDelivery for the purpose of electronic submission of court filings. On April 29, 2020, the court amended its Emergency Local Rules of Court to mandate use of eDelivery, with certain exceptions, effective May 11, 2020. (Emergency Local Rules of Court, Rule 10.27(G).) Defendants point to a statement on the court's website indicating that eDelivery was mandated effective March 11, 2020. This statement is erroneous, and conflicts with the Emergency Local Rules of Court. The court has now remedied this error, and apologizes for any confusion.

The court's prior ruling on plaintiff's motion for leave effectively gave plaintiff ten court days to file the amended complaint. In light of the implementation of extended court holidays between March 17, 2020 and May 8, 2020, the first amended complaint was technically filed and served within ten court days. Further, as set forth in the declaration of Bret Batchman, other circumstances including county shelter-in-place orders impacted counsel's ability to file the first amended complaint by the court's stated deadline.

Based on the foregoing, defendant's motion to strike is denied.

12. S-CV-0042251 Sheridan, Christopher vs. Farmer's Insurance

This tentative ruling is issued by the Honorable Charles D. Wachob. If oral argument is requested, it shall be heard at 8:30 a.m. in Department 42.

Motion for Summary Judgment, or Alternatively, Summary Adjudication

Defendant's request for judicial notice is granted as to Exhibit J. The request for judicial notice is denied as to Exhibit K, as this exhibit is not relevant to the issues to be determined for the purpose of this motion.

Defendant Mid-Century Insurance Company (“Mid-Century”) moves for summary judgment, or alternatively summary adjudication of each cause of action alleged by plaintiff.

The party seeking summary judgment bears the burden of showing there is no triable issue of material fact and that the party is entitled to judgment as a matter of law. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) If the moving party carries its initial burden of production to make a prima facie showing that there are no triable issues of material fact, the burden shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. (*Id.*)

Plaintiff alleges claims of breach of contract, breach of the implied covenant of good faith and fair dealing, and intentional infliction of emotional distress, arising out of Mid-Century’s denial of coverage for certain items stolen from plaintiff’s home. (SSUMF 1-4.) Mid-Century asserts that each of the claims alleged by plaintiff in his complaint are time-barred by the one year limitations period set forth in the subject insurance policy.

The insurance policy at issue (“the Policy”) states that “[s]uit on or arising out of the SECTION I – PROPERTY COVERAGE of this policy must be brought within one year after inception of the loss or damage.” (SSUMF 1.) This type of contractual limitations period has been recognized as valid in California. (*C&H Foods Co. v. Hartford Ins. Co.* (1984) 163 Cal.App.3d 1055, 1064; *Basurco v. 21st Century Ins. Co.* (2003) 108 Cal.App.4th 110, 118.) However, the one-year period will be equitably tolled from the time that the claim is reported to the insurance company, until the time that the insurer unequivocally denies the claim in writing. (*Prudential-LMI v. Superior Court* (1990) 51 Cal.3d 674, 678.)

Plaintiff made a claim for the theft of personal items from his residence on or about August 24, 2016. (SSUMF 2.) On March 27, 2017, Mid-Century sent plaintiff a letter which stated:

We’ve completed the adjustment of your loss and we are closing your claim. While we welcome any additional information you may wish to provide, the claim will not be reopened unless we notify you of such in writing.

(SSUMF 3.) The letter also referenced the one-year limitations period set forth in the Policy. (*Id.*) Mid-Century asserts that tolling thus ended on March 27, 2017, giving plaintiff until March 27, 2018, to file any action relating to property coverage under the Policy. As the current action was not filed until December 18, 2018, Mid-Century argues that the claims alleged therein are time-barred.

In opposition, plaintiff points to a Policy term relating to depreciation, which states:

For any loss to property which may be settled on a replacement cost basis, you have 365 days from the date of our first payment toward actual

cash value to collect any amounts due for replacement cost settlement... the property must actually be repaired or replaced by you to collect replacement cost. If you do not actually repair or replace the property within 365 days from the date of your first payment toward actual cash value, then the loss or damage will only be settled for actual cash value.

(Pltf. RSSUMF 3.) Plaintiff notes that on March 13, 2017, Mid-Century sent him a letter which stated that in order to recover withheld depreciation he was required to submit invoices or receipts within 365 days from the date of the first Actual Cash Value Payment, or by no later than March 13, 2018. (Id.) Plaintiff argues that this letter effectively kept his claim open until March 13, 2018, also meaning that the statute of limitations remained tolled during that time.

Plaintiff cites *Lake v. First National Insurance Co.* (N.D. Cal. 2010) 2010 WL 2557489 (“*Lake*”), a federal district court case, in support of the opposition. Although not binding, federal district court cases are citable as persuasive authority. (See *Olinick v. BMG Entertainment* (2006) 138 Cal.App.4th 1286, 1301, fn. 11.) In *Lake*, after sending plaintiff the actual cash value payment, the insurer repeatedly communicated to the plaintiff that it was “keeping its file open”, and made various payments during that period based on plaintiff’s claims. The court found that a triable issue of material fact existed which precluded summary judgment on statute of limitations grounds.

The facts of the instant case are distinguishable from *Lake*. In this case, Mid-Century expressly informed plaintiff that it was closing its file on March 27, 2017. The letter constitutes an unequivocal denial of plaintiff’s claim. (See *Migliore v. Mid-Century Insurance Company* (2002) 97 Cal.App.4th 592, 605.) Plaintiff submits no evidence showing that Mid-Century suggested that the file would be kept open. Plaintiff also cites no California law which supports the argument that the additional period for depreciation recovery operates to extend equitable tolling of the contractual limitations period. As pointed out by Mid-Century, federal district courts are not in accord on this issue. (See *Barseghian v. Allstate Insurance Company* (C.D. Cal. 2012) 2012 WL 1400497 (finding as a matter of law that denial letter was unequivocal for the purpose of equitable tolling, despite continuing one-year period to recover depreciation).)

Because Mid-Century’s March 27, 2017 letter constituted an unequivocal denial of plaintiff’s claim, equitable tolling of the one-year deadline to bring a claim ended as of that date. It follows that plaintiff’s complaint, filed approximately one year and eight months later, is time-barred.

Based on the foregoing, Mid-Century’s motion for summary judgment is granted.

13. S-CV-0042357 King, Ted Arthur vs. Tarver, Russell Lee

This tentative ruling is issued by the Honorable Charles D. Wachob. If oral argument is requested, it shall be heard at 8:30 a.m. in Department 42.

Motion to Release Documents

Plaintiff's motion to release documents produced pursuant to subpoena duces tecum is denied.

The motion is procedurally deficient as it does not include a notice of motion as required by Code of Civil Procedure section 1010 and California Rules of Court, rule 3.1110. The notice must state the nature of the order sought and the grounds for such an order in the first paragraph. (Code of Civil Procedure section 1010; California Rules of Court, rule 3.1110(a).)

Plaintiff's memorandum of points and authorities also does not identify what relief is being sought. It is only in his declaration that plaintiff requests that the court:

...conduct an in-camera review of records of ILien Lien Co. regarding the business transaction of Russell Lee Travers' [sic] and ILien Lien Companies [sic] part in their transaction of records to determine appropriate disclosure.

(Declaration of Ted King at 13:5-9.)

Plaintiff's motion does not set forth any basis for the court to conduct an in camera review of documents. It is unclear from plaintiff's moving papers whether third party ILien Lien Co. has been served with a subpoena in this action, and if so, whether ILien Lien Co. or defendant has objected to production of documents that are responsive to the subpoena, and the basis for any objections.

Defendant's request for sanctions pursuant to Code of Civil Procedure section 128.5 is denied. Defendant's request does not comply with the procedural requirements of the statute. (Code of Civil Procedure section 128.5(f)(1)(A), (B).)

14. S-CV-0043163 Cal. State Grange vs. The Meadow Vista Community Guild

This tentative ruling is issued by the Honorable Charles D. Wachob. If oral argument is requested, it shall be heard at 8:30 a.m. in Department 42.

Motion to be Relieved as Counsel

The motion to be relieved as counsel for defendant by Freeman Mathis & Gary, LLP, is granted, effective upon the filing of proof of service of the court's signed order after hearing on defendant Meadow Vista Community Guild. Counsel is directed to resubmit

a proposed order which accurately reflects all pending hearing dates including the mandatory settlement conference and civil trial conference.

15. S-CV-0043813 Ambrose, Steven vs. City of Lincoln, et al

The motions for attorneys' fees are continued to July 31, 2020, to be heard by Commissioner Glenn M. Holley. The date, time and department for oral argument on the motions shall be set forth in the tentative ruling published in connection with the continued hearing date. The court apologizes for any inconvenience to the parties.

16. S-CV-0043961 Washington, Monica Levette vs. Angius & Terry, LLP, et al

This tentative ruling is issued by Commissioner Glenn M. Holley. If oral argument is requested it shall be heard on **Tuesday, July 28, at 1:00 p.m. in Department 40.**

Defendant Brookfield Homeowners' Association's Special Motion to Strike

Rulings on Objections

Defendant's objections to evidence are ruled on as follows: Objection Nos. 4-7, 9, 13-16, 18, 19, 24-26, 29, 33, 34, 40, 42, 43, 46, 53, 55, 59-61, 66-69, 72, 75, 76 and 80-82 are sustained. The remaining objections are overruled.

Ruling on Request for Judicial Notice

Defendants' request for judicial notice is granted. With respect to Exhibits 15, 16, 18-25, 28, 30, 32-34, and 36-40, the court takes judicial notice of the fact that these documents were filed in a prior action, but not the truth of factual statements made therein.

Ruling on Motion

Defendant Brookfield Homeowners' Association ("Brookfield") moves to strike plaintiff's first cause of action for malicious prosecution.

A motion brought under Code of Civil Procedure section 425.16, also known as an anti-SLAPP motion, is a procedural remedy designed to dispose of lawsuits that are brought primarily to chill the valid exercise of a party's constitutional right of petition or free speech. Code Civ. Proc. § 425.16(a); see also *Sylmar Air Conditioning v. Pueblo Contracting Svcs., Inc.* (2004) 122 Cal.App.4th 1049, 1055-1056. In determining whether an action or claim is a SLAPP suit subject to a special motion to strike, the court evaluates first whether the claim arises out of the defendant's protected speech or petitioning activity, and second whether plaintiff can show a probability of success on the merits. *Navellier v. Sletten* (2002) 29 Cal.4th 82, 88-89. Defendant has the burden of proof to show that plaintiff's claims arise from defendant's exercise of free speech or petition rights as defined in Code of Civil Procedure section 425.16(e). *Eqilon*

Enterprises, LLC v. Consumer Cause, Inc. (2002) 29 Cal.4th 53, 61. If defendant makes a prima facie showing that the cause of action at issue arises from his or her constitutionally protected free speech or petition activity, the burden shifts to plaintiff to establish a probability of prevailing on the claim. *Governor Gray Davis Committee v. American Taxpayers Alliance* (2002) 102 Cal.App.4th 449, 458-459.

Plaintiff's first cause of action for malicious prosecution arises out of a complaint filed by Brookfield against plaintiff in Sacramento County Superior Court on claims for injunctive relief, defamation, and violation of the CC&Rs. The first cause of action arises from protected activity under Code of Civil Procedure section 425.16(e)(1) and (2), which includes any statement or writing made in, or in connection with, an issue under consideration or review by a judicial proceeding. *See Jarro v. LaMarche* (2003) 31 Cal.4th 728, 741. The burden thus shifts to plaintiff to demonstrate a likelihood of success on the merits of this claim.

To establish a probability of success, the opposing party must demonstrate he or she has a legally sufficient claim. *Taus v. Loftus* (2007) 40 Cal.4th 683, 713-714. The court does not weigh the credibility or probative strength of the competing evidence. It accepts the opposing party's evidence as true and evaluates the moving party's evidence only to determine if it has defeated the opposing party's evidence as a matter of law. *Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3. Plaintiff must produce evidence that would be admissible at trial in order to proffer a prima facie showing of facts supporting a judgment in plaintiff's favor. *Chavez v. Mendoza* (2001) 94 Cal.App.4th 1083, 1087.

To establish a claim for malicious prosecution, plaintiff must demonstrate that the prior action (1) was commenced by or at the direction of the defendant and was pursued to a legal termination in plaintiff's favor; (2) was brought without probable cause; and (3) was initiated with malice. *Sheldon Appel Co. v. Albert & Olier* (1989) 47 Cal.3d 863, 871. Brookfield contends that plaintiff is unable to demonstrate evidence of a lack of probable cause or malice.

Plaintiff's opposition focuses on two causes of action alleged in Brookfield's prior complaint – defamation based on libel and defamation based on false light. These causes of action were based on allegations that plaintiff was “[p]ublicizing to persons and the public outside of the Development false statements of facts about [Brookfield] that (A) [Brookfield's] board members are failing to pay monetary assessments to Plaintiff ... (B) [Brookfield's] board of directors and management are embezzling money...; (C) [Brookfield] is foreclosing on homes ... in contravention of the laws, and (D) [Brookfield] is failing to perform maintenance and repairs...” (Pltf. Exh. 14R, ¶ 6.) Plaintiff argues that Brookfield lacked probable cause to allege libel or false light because her statements were privileged, or alternatively because they were either objectively true or simply statements of opinion.

Probable cause is determined under an objective standard, without regard to the defendant. *Sheldon Appel Co. v. Albert & Olier*, *supra*, 47 Cal.3d at 878. Probable

cause is present unless any reasonable attorney would agree that the action is totally and completely without merit at the time it is instituted. *Id.* at 885. The fact that the underlying case was dismissed in plaintiff's favor is not determinative of a lack of probable cause. *Jarrow v. LaMarche, supra*, 31 Cal.4th at 742-743. The question here is not whether plaintiff had a viable defense to the defamation claims, but whether any reasonable attorney would have agreed that the claims were totally and completely without merit at the time the action was instituted. Plaintiff fails to satisfy her burden in that regard.

Plaintiff notes that in the underlying action, Brookfield failed to submit admissible evidence of malice on her part, leading to the court's decision to grant plaintiff's anti-SLAPP motion. However, Brookfield's failure to establish evidence of malice does not equate to a lack of probable cause. In the underlying action, Brookfield took the position that malice could be demonstrated because documents to which plaintiff had access contradicted plaintiff's statements, or because discovery would also reveal evidence of malice. Although the court disagreed, plaintiff does not set forth any evidence which would suggest Brookfield's position was clearly untenable at the time the underlying litigation was initiated.

Plaintiff also fails to submit admissible evidence of malice on the part of Brookfield. Malice includes "actual hostility or ill will ... or a subjective intent to deliberately misuse the legal system for personal gain or satisfaction at the expense of the wrongfully sued defendant." *Downey Venture v. LMI Ins. Co.* (1998) 66 Cal.App.4th 478, 498-499. "[M]alice is present when proceedings are instituted primarily for an improper purpose." *Sierra Club Foundation v. Graham* (1999) 72 Cal.App.4th 1135, 1157. In attempting to support the element of malice, plaintiff points to a July 3, 2018 cease and desist letter which she received from defendants, and argues that the court can infer from the letter that defendants sought to force her to expend resources and abandon her own claims against Brookfield. She also notes that the complaint was filed shortly after she was served with a Notice of Board Hearing which threatened to impose disciplinary measures against her, "adding insult to injury". Both the cease and desist letter and the board's disciplinary proceedings relate to actions by plaintiff which she freely admits to engaging in – including acts which formed the basis of the underlying complaint. That the parties disagree about the legal consequences of plaintiff's actions does not, by itself, support a finding of malice.

Based on the foregoing, Brookfield's motion to strike is granted.

Defendants' Motion for Attorneys' Fees

Rulings on Requests for Judicial Notice and Objections to Evidence

The parties' requests for judicial notice are granted.

Plaintiff's objections to evidence are ruled on as follows: Objection Nos. 2, 3, 4, 5 and 8 are sustained. The remaining objections are overruled.

Defendants' objections to evidence are ruled on as follows: Objection No. 1 is sustained. Objection No. 2 is overruled.

Ruling on Motion

Defendants Angius & Terry, LLP, Bradley Epstein and Allison Andersen's motion for attorneys' fees and costs is granted as set forth below.

Defendants prevailed on their special motion to strike pursuant to Code of Civil Procedure section 425.16, and are entitled to seek recovery of attorneys' fees incurred for that portion of the motion relating to plaintiff's claim for defamation. Code Civ. Proc. § 425.16(c)(1). The purpose of the fee-shifting provision is to discourage meritless lawsuits and also to provide financial relief to the victims of lawsuits which are subject to the anti-SLAPP law. *City of Los Angeles v. Animal Defense League* (2006) 135 Cal.App.4th 606, 627. Although the statute itself is ambiguous as to what "fees and costs" are recoverable, courts have held that only fees and costs incurred on the motion to strike are allowed, as opposed to fees incurred for the entire litigation. *Lafayette Morehouse, Inc. v. Chronicle Pub. Co.* (1995) 39 Cal.App.4th 1379, 1383; *S.B. Breach Properties v. Berti* (2006) 39 Cal.4th 374, 381. Only fees deemed by the court to be reasonable may be recovered. *Robertson v. Rodriguez* (1995) 36 Cal.App.4th 347, 362.

Fee setting typically begins with the "lodestar" – i.e., a touchstone figure based on the number of hours reasonably expended multiplied by the reasonable hourly rate. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-1097. The lodestar approach is also appropriate in analyzing fee awards under Code of Civil Procedure section 425.16. *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1136. As stated in their reply brief, defendants request attorneys' fees and costs of \$38,194.80. The costs requested total \$2,793.14. The requested attorneys' fees are based on billing rates of \$400 per hour for partner Jessica MacGregor, and \$320 per hour for associate Nicola Till.

"The reasonable hourly rate is that prevailing in the community for similar work." *PLCM Group v. Drexler, supra*, 22 Cal.4th at 1095. Based on its review of the declarations in support of the motion, the court finds counsel's hourly rate to be reasonable based on the reasonable hourly rate prevailing in the community for similar services.

The court next turns to the question of whether the hours expended were reasonable. To that end the court has reviewed the motion papers, counsel's declarations, and the entire file in this action. The court also draws upon its experience in assessing fee motions following successful anti-SLAPP motions in other cases. Based upon this review, the court concludes that the total amount of fees requested by defendants are not reasonable in amount. In particular, the billing statements show that defendants' counsel billed over 80 hours, and seek fees exceeding \$28,000, in connection with research, drafting, associated tasks related to that portion of the anti-SLAPP motion relating to plaintiff's defamation claim. Counsel also billed over 25 hours, and seeks exceeding \$9,000, in

connection with the current motion for fees. The court finds such fees to be excessive in light of the factual and legal issues involved in this case and in the subject motions.

In light of its experience in assessing motions of this type, as well as a careful review of the declarations of counsel and the entire file in this action, the court awards attorneys' fees based on 15 hours billed by Ms. MacGregor and 35 hours billed by Ms. Till with respect to the motion to strike, for a total of \$17,200. The court also awards an additional \$6,500 for fees associated with the instant motion for fees. With respect to defendants' request for costs, the court declines to award costs requested for photocopies, mail or Westlaw research charges.

Defendants Angius & Terry, Bradley Epstein and Allison Andersen are awarded attorneys' fees in the total amount of \$23,700, and costs in the total amount of \$1,287.08.

17. S-CV-0044485 Hansen, Daniel vs. R.G. Environmental Holdings, Inc.

This tentative ruling is issued by the Honorable Charles D. Wachob. If oral argument is requested, it shall be heard at 8:30 a.m. in Department 42.

Motion for Preliminary Approval of Class Action Settlement

Plaintiff's motion for preliminary approval of class action settlement is **continued to August 21, 2020, at 8:30 a.m. in Department 3.**

In reviewing the fairness of a class action settlement, the court is to give due regard to the parties' agreement, ensuring the agreement is not a product of fraud, overreaching parties, or collusion, and that the settlement as a whole is fair, reasonable, and adequate. (*In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1389; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1145.) Reasonableness of the settlement may be determined by looking to several factors such as the strength of the plaintiff's case; the risk, expense, complexity, and duration of further litigation; discovery; the experience of counsel; the presence of government participation; and the reaction of class members to the proposed settlement. (*In re Cellphone Fee Termination Cases, supra*; *Dunk, supra*; *Kullar v. Foot Locker Retail, Inc., supra*.) "[I]f the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that the notice be given to the class members of a formal fairness hearing..." (*Schwartz v. Dallas Cowboys Football Club, Ltd.* (E.D. Pa. 2001) 157 F.Supp.2d 561, 570, n.12, quoting Manual for Complex Litigation § 30.44 (1985).)

Plaintiff's motion is supported by the declaration of attorney Daniel Gaines. Mr. Gaines sets forth valuations of most of the claims alleged in the complaint. The valuations derive from "a comprehensive damage analysis using sampling information obtained

through informal discovery.” (Declaration of Daniel Gaines at 4:3-5.) Mr. Gaines does not further identify the discovery provided by defendant which was used to create the analysis. Mr. Gaines does not state who in his office reviewed the discovery, and created the damage analysis, and what their qualifications are. Mr. Gaines does not state whether an expert was consulted for this purpose. Mr. Gaines also does not discuss plaintiff’s claim for failure to reimburse business expenses, and no additional information is provided to support an enhancement payment to plaintiff in the amount of \$20,000. Finally, it is unclear from the moving papers whether plaintiff’s counsel is seeking approval for fees of 35 % of the Maximum Settlement Amount, or \$140,000 (which is 40% of the Maximum Settlement Amount). (See Motion at 3:26-27.)

The court requests further information in order to determine the reasonableness of the subject settlement agreement. Plaintiff may file and serve a supplemental declaration which addresses the foregoing issues no later than five court days prior to the continued hearing date.

18. S-CV-0044671 Bowman, David B. vs. Halle, Preston

This tentative ruling is issued by Commissioner Michael A. Jacques. If oral argument is requested it shall be heard **Thursday, July 30, at 8:15 a.m. in Department 41**. In light of the court’s other assignments, oral argument will be limited to no more than 15 minutes.

Motion for Attorneys’ Fees

Respondent’s motion for attorneys’ fees is granted as follows:

Respondent is entitled to seek attorneys’ fees and costs as the prevailing party in this civil harassment proceeding. Code Civ. Proc. § 527.6(s). The court’s determination of an award of attorneys’ fees begins with the lodestar method, i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate. *PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1095. The court has reviewed the declaration of Cassandra Ferrannini in support of the motion, and finds the requested billing rate for counsel to be reasonable based on the hourly rate prevailing in the community for similar services. The court further finds that the reasonable amount of attorneys’ fees for the instant matter totals \$3,159.50.

Respondent is awarded attorneys’ fees from petitioner in the total amount of \$3,159.50.

19. S-CV-0044933 Portz, Maribeth, et al vs. Teixeira, Donald, et al

This tentative ruling is issued by the Honorable Charles D. Wachob. If oral argument is requested, it shall be heard at 8:30 a.m. in Department 42.

Application for Order to Show Cause

Plaintiffs' application for issuance of order to show cause re sale of dwelling is **continued to August 7, 2020, at 8:30 a.m. in Department 3.**

Plaintiffs' application was previously continued from June 11, 2020, in Department 32. The minutes from the prior hearing indicate that plaintiffs were to provide notice of the new hearing date. There is currently no indication in the court's file that plaintiffs provided notice as directed by the court.

In advance of the continued hearing date, plaintiffs shall file proof of service establishing service of the application on defendants. Plaintiffs shall also provide notice to defendants of the continued hearing date, and file proof of service of the same.
